

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROY WILMOTH, JR., *et al.*,

Plaintiffs,

v.

Case No. 1:19-cv-03556

ALEX AZAR, in his capacity as Secretary of the United States Department of Health and Human Services,

Defendant.

PLAINTIFFS' MOTION FOR SUMMARY JUDGEMENT

Pursuant to FED. R. CIV. P. 56 and LCvR 56(h)(2), (n), Plaintiffs, Medicare beneficiaries Roy Wilmoth, Jr., Maureen Piekanski, and Edwin R. Banks (collectively, "Plaintiffs") respectfully submit this motion for summary judgment in this administrative appeal of three adverse Medicare coverage decisions with respect to a critical treatment for brain cancer.

As set forth in the accompanying memorandum, Plaintiffs are entitled to judgment as a matter of law because (1) Defendant, the Secretary, is barred by collateral estoppel from relitigating the issue after several prior decisions and (2) the Secretary's coverage decisions are arbitrary and capricious

WHEREFORE, Plaintiffs respectfully request an order granting summary judgment and directing the Secretary to provide coverage for the claims at issue in Appeal No. 1-8363484331 (for Mr. Wilmoth), Appeal No. 1-8071086400 (for Mrs. Piekanski), and Appeal No. 1-8136495060 (for Mr. Banks).

Dated: November 26, 2019

Respectfully submitted,

/s/Daniel Z. Herbst

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